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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,741	02/17/2006	Matt Sauer	1317300026US	4144
23416	7590	07/11/2008	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ, LLP			PAGE, BRENT T	
P O BOX 2207				
WILMINGTON, DE 19899			ART UNIT	PAPER NUMBER
			1638	
			MAIL DATE	DELIVERY MODE
			07/11/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/568,741	SAUER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	BRENT PAGE	1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 18 March 2008.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 19-24,26-34,37-39 and 41-43 is/are pending in the application.

4a) Of the above claim(s) 22-24,29-34,37-39 and 41-43 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 19-21 and 26-28 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

The cancellation of claims 25, 35-36, 40 and 44 without prejudice is hereby acknowledged.

### ***Claim Rejections - 35 USC § 112***

The rejection of claims 19-21 and 26-28 under 35 USC 112 first paragraph for lacking enablement and lacking written description is hereby withdrawn in response to the claim amendments when taken together with Applicants' arguments.

### ***Claim Rejections - 35 USC § 103***

Claims 19-21 and 26-28 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Hauptmann et al (US Patent 7223909 filed March 20, 2003) in view of Vishnevetsky et al (1999 The Plant Journal 20:423-431) for the reasons in the office action mailed out 09/18/2007 as well as the reasons set forth below.

Applicant's arguments filed 03/18/2008 have been fully considered but they are not persuasive.

Applicants urge that at the time of invention, numerous flower-specific promoters were known, but many do not direct expression of genes in a flower-specific or petal-specific fashion in the plants of the genus Tagetes, and therefore there would not have been a reasonable expectation of success.

This is not persuasive because one of ordinary skill in the art would still appreciate that a known floral-specific promoter is more likely than other types of promoters to direct floral-specific expression in Tagetes and would have therefore been

motivated to use the promoter of the invention. Furthermore, Vishnevetsky also discloses the floral-specific nature of the CHRC promoter. The promoter is known in the art and the specificity of the promoter is desired in the genus *Tagetes* as demonstrated by Hauptmann. Absent direct evidence to the contrary involving the CHRC promoter, there would have been reasonable expectation of success by one of ordinary skill in the art in transforming *Tagetes* with the promoter and achieving floral and petal-specific expression as disclosed and demonstrated by Vishnevetsky.

No claim is allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRENT PAGE whose telephone number is (571)272-5914. The examiner can normally be reached on Monday-Friday 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571)-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brent T Page

/Russell Kallis/

Primary Examiner, Art Unit 1638

7/03/2008